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ALEXANDER L. STEVAS,
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UNITED STATES SUPREME COURT

READING HOSPITAL AND
MEDICAL CENTER,
Petitioner

NO.82-201

vs.

A. RAB CHOWDHURY,
Respondent

RESPONDENT'S ANSWER TO PETITION SEEKING WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. DOES TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. Sec.2000d through 2000d-4 PROVIDE TO THE RESPONDENT AN ADMINISTRATIVE REMEDY TO CORRECT THE PETITIONER'S VIOLATION OF SECTION 2000d?

II. ASSUMING THAT AN ADMINISTRATIVE REMEDY IS PROVIDED TO THE RESPONDENT IN TITLE VI, CAN THE RESPONDENT OBTAIN INJUNCTIVE RELIEF THEREUNDER?

LIST OF PARTIES

The parties in this action are as set forth in the caption.

TABLE OF AUTHORITIES

Cases:

Bossier Parish School Board vs. Lemon, 370 F.2d 847,852 (1967)

Hawthorne vs. Kenbridge Recreation Assn, Inc. 341 F. Supp. 1382 (1972)

Santiago vs. City of Philadelphia, 435 F. Supp. 136 (1977)

Serna vs. Portales Municipal Schools, 499 F. 2d 1147 (1974)

Statute:

Title VI Civil Rights Act of 1964, 42 U.S.C. 2000d through 2000d-4

Regulation:

45 C.F.R., 80.7 through 80.10

JURISDICTIONAL STATEMENT, BASIS OF JURISDICTION OF DISTRICT COURT

The jurisdiction of your Honorable Court, of the Court of Appeals and of the District Court is correctly recited on pages 5 and 13 of the Petition Seeking Writ of Certiorari.

CONCISE STATEMENT OF THE CASE

The Statement of the Case set forth on page 12 of the Petition Seeking Writ of Certiorari is fairly stated to the Court, and hereby adopted by the Respondent.

OPPOSITION TO ALLOWANCE OF WRIT OF CERTIORARI

Respondent opposes the issuance of a Writ of Certiorari by your Honorable Court because the Petition filed fails to meet the criteria set forth in Supreme Court Rule No.19. The attempt in the Petition to describe the issues as important questions ignores the fact that the Administrative Agency, if it so desired, could require by regulation that private litigants serve it with a copy of any complaint filed with the District Court, or require federally funded institutions to notify the Agency immediately upon the receipt of a private complaint. The Agency involved in the instant matter apparently has no interest in those disputes which are handled privately by persons aggrieved by violation of the law and, therefore, it has made no attempt to create a procedure by which it would become aware of the private complaints. If the Agency involved is not concerned with this public issue, why should our court system be concerned with it?

Respondent also opposes the granting of a Writ of Certiorari because the reasons set forth in the Petition for the Writ are without substance as a matter of law, for the following reasons:

(a) Neither Title VI of the Civil Rights Act of 1964, 42 U.S.C., Sec. 2000d through 2000d-4 nor the Regulations of the Department of Health and Human Services, 45 C.F.R., 80.7 through 80.10 provide to the Respondent an administrative remedy. The Act and the Regulations promulgated thereunder authorize investigations by the Department, but do not provide for any control of the procedure by the party against whom discrimination has been practiced and, therefore, there is no administrative remedy available to the Respondent.

(b) Assuming, arguendo, that a complaint was filed with the Department and the Department, after its investigation, determined that there was discrimination, the question then must be answered could the Department obtain for the Respondent

what he seeks in his private law suit, and the answer to this question is No. The Department could suspend federal funds, but could not order the Petitioner to discontinue discrimination if it chose not to accept federal funds. Is the Respondent entitled to use our court system for his individual protection where none is available through an administrative procedure, and the courts have answered this question Yes, in the following cases: Serna vs. Portales Municipal Schools, 499 F.2d 1147 (1974); Bossier Parish School Board vs. Lemon, 370 F.2d 847,852 (1967); Hawthorne vs. Kenbridge Recreation Ass'n, Inc., 341 F.Supp. 1382 (1972).

The District Court, in dismissing the Respondent's Complaint, because he did not exhaust an administrative remedy, relied upon the logic in Santiago vs. City of Philadelphia, 435 F. Supp. 136 (1977), however, it overlooked the law set forth in that case which states, in effect, that a plaintiff does not have a duty to exhaust an administrative remedy where the cases show that such exhaustion would be ineffective or futile. In the

instant matter, assuming that there was an administrative remedy to exhaust, exhaustion would be futile because it would not give Respondent the injunctive relief he seeks.

Respectfully submitted,

WALDRON, LIPKIN & GOLDSTEIN

by: _____
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Attorney for Respondent